

The complaint

Mr P complains that Specialist Motor Finance Limited ("SMF") unfairly declined his request to voluntarily terminate a hire purchase agreement he had with it for a car.

Mr P has been assisted by another person in bringing his complaint but for ease of reference I'm only referring to Mr P in my decision.

What happened

In August 2022 Mr P entered into a five-year hire purchase agreement with SMF for a car. The total cost of the agreement was £16,159 and the monthly payments were around £269.

Mr P experienced a change to his financial circumstances and in June 2024 he emailed SMF requesting that the agreement be voluntarily terminated (VT) as it was no longer affordable for him. SMF sent him the VT package and an income and expenditure form to complete.

At the time Mr P requested the VT he hadn't reached the 50% balance threshold for the agreement and there was £2,148.20 outstanding. SMF calculated that Mr P needed to pay £61.72 per month to clear this outstanding liability within the term of the agreement. However, Mr P offered to pay £10 per month. SMF declined the offer as it said this wasn't reasonable and declined to VT the agreement as it said Mr P didn't meet the criteria for this option. It also said that there would be a charge of £150 incurred for it to collect the car and that the car required a valid 3-month MOT in place at the point the car was collected.

Mr P complained to SMF. He said that he was entitled to VT the agreement at any time and that although he accepted he would be liable for the balance of £2,148.20, SMF couldn't make any requirements as to how this amount would be paid. Mr P said that SMF was in breach of sections 99 and 100 of the Consumer Credit Act 1974 by declining his request.

Mr P also complained that SMF was unfairly seeking to charge a fee for collecting the car and said he disagreed that the car required a valid 3-month MOT being in place on its return.

SMF didn't uphold Mr P's complaint. It said that the income and expenses form completed by Mr P had shown he would not be able to clear the outstanding amount of £2,148.20 so as to meet the 50% paid mark within the hire purchase's remaining term. SMF said that following a review of Mr P's finances, it had informed him that he wouldn't be able to VT the agreement and had requested he contact Customer Financial Support team to discuss other exit strategies.

SMF said it had provided Mr P with the correct information regarding his VT request and had been unable to action his request as no reasonable plan could be put in place to complete the payments of the outstanding liability.

Mr P was unhappy at SMF's response and complained to this service. He said he had a right to request the VT in line with the Consumer Credit Act 1974 at any time. Mr P said SMF had been in breach of that Act when it had declined his request. He also said it hadn't been entitled to request any fee for collecting the car or that the car had a three-month valid MOT

in place.

Our investigator didn't recommend Mr P's complaint be upheld. He said he didn't think SMF had acted unfairly nor breached the Consumer Credit Act 1974.

Our investigator said that under section 99 of the Consumer Credit Act 1974 a consumer had a right to terminate a hire purchase agreement before the final payment falls due. And that under section 100 the consumer is liable to pay half of the amount due under the agreement immediately before the termination.

Our investigator said that he thought Mr P's hire purchase agreement had been clear that for it to be VT, Mr P had to have paid 50% of the total amount due. He said as Mr P had not done so then SMF had tried to put a payment plan in place, but Mr P's finances had been unable to support that. He said he was satisfied that Mr P hadn't met the criteria for a VT and that SMF hadn't breached the Consumer Credit Act in declining his request.

Our investigator also said that as Mr P hadn't returned the car, SMF had acted fairly when it offered to seize the car for him in order for him to meet the return criteria of a VT with a charge of £150. He said that under the terms and conditions of the agreement the car must be kept insured and taxed and there would be a breach of the agreement if it wasn't. And he said that under the agreement's terms there was an expectation that the car had a valid MOT in place.

Mr P disagreed with the view of our investigator. He said that he accepted he needed to pay 50% of the amount due under the hire agreement. He said he had sought to VT the agreement due to his circumstances, but SMF had declined to give him an address to drop the car off and had declined his request. He said he had made a temporary offer of £10 per month to clear the outstanding balance but that would have changed when his circumstances improved. Mr P said that he had kept the car taxed, MOT'd and insured up until July 2024 which was after the point he had requested to VT the agreement. Mr P said that SMF has now defaulted the agreement and collected the car.

As the parties have been unable to reach an agreement the complaint has been passed to me.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I appreciate Mr P feels strongly he was entitled to VT the hire purchase agreement and that SMF acted unfairly when it declined his request. This will be of disappointment to Mr P, but I don't agree with his view and I will explain why below.

I agree that under section 99 of the Consumer Credit Act a consumer has a right to voluntarily terminate (VT) a regulated credit agreement, such as a hire purchase agreement, at any time before the final payment. And that section 100 limits the amount a consumer has liability to pay to 50% of the total amount due when they voluntarily terminate.

Section 100 says that "*where a regulated hire purchase agreement is terminated under section 99 the debtor shall be liableto pay to the creditor the amount (if any) by which one half of the of the total price exceeds the aggregate of the sums paid and the sums due in respect of the total price immediately before the termination.*" So, the expectation is that the 50% threshold is met before the agreement is VT.

It isn't disputed that Mr P hadn't yet reached the 50% balance threshold and that there was still £2,148.20 that needed to be paid. I've seen that SMF hadn't required Mr P to pay a lump sum before the agreement could be VT. It had instead reviewed Mr P's financial circumstances and offered a payment plan of £61.72 per month which would allow the outstanding balance to have been cleared within the remaining term of the agreement. Unfortunately, Mr P's financial circumstances couldn't support that payment rate and he had offered a payment plan of £10 per month. SMF had declined that as it said it was unreasonable given the length of time it would take to clear the outstanding amount.

I think SMF's refusal to accept Mr P's offer was something it was entitled to do and that it wasn't acting unfairly when it did so. Mr P's offer would have taken around 18 years to pay off the outstanding balance and so wasn't reasonable. I'm satisfied that Mr P didn't meet the criteria to VT and couldn't afford to take this option.

As SMF wasn't acting unfairly in declining to accept Mr P's request to VT the hire purchase then I can't reasonably criticise it for not providing an address to Mr P to return the car. And on looking at the agreement's terms and conditions, I'm satisfied there was a requirement that until it was terminated there was an obligation on Mr P to keep the car taxed and insured. I'm also satisfied that on VT the car needed to have a three-month valid MOT in place. However, as the reason for the VT to be declined wasn't due to the lack of the MOT and/or a collection fee I don't think I need to comment further on those matters save that SMF hadn't given Mr P any incorrect information.

In respect of the lack of insurance and tax for the car being in place following Mr P's request to VT, I can appreciate these would have been an additional financial burden for Mr P to meet but they were an obligation for him under the terms and conditions. However, as the agreement has now been defaulted and the car collected, I again don't think I need to comment further on that.

As I don't think VT was an option for Mr P then I'm not surprised SMF has decided to default the account. If Mr P considers that was an unfair decision, then he would need to make a separate complaint to SMF about that before this service could look at it. It isn't in my remit to comment on matters which haven't been raised with the business first.

I'm not upholding Mr P's complaint. I don't think that SMF's decision to decline his request to VT the hire purchase agreement was unfair or breached the Consumer Credit Act 1974. He hadn't paid 50% of the full amount due under the agreement and wasn't in a position where he could pay that amount in a reasonable timescale. SMF didn't seek to apply any charges to the VT that it wasn't entitled to do under the agreement and didn't provide any information to Mr P about the VT that was wrong.

My final decision

For the reasons set out above, I'm not upholding Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 January 2025.

Jocelyn Griffith
Ombudsman